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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANJELIQUE REESE,

Defendant and Appellant.

B291646

(Los Angeles County
Super. Ct. No. MA072720)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephen I. Goorvitch, Judge. Affirmed.

Joshua Schraer, Lillian Hamrick, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and Charles J. Sarosy, Deputy Attorneys General.

INTRODUCTION

A jury convicted appellant Anjelique Reese of cruelty to an animal in violation of Penal Code section 597, subdivision (b).¹ Appellant contends on appeal that the statute under which she was convicted is unconstitutionally vague. Appellant also contends the trial court erroneously failed to define certain statutory terms for the jury and imposed unlawful conditions of probation. Finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

One afternoon in November 2017, appellant beat her dog, Tigra. During the beating, appellant dragged, punched, and kicked Tigra. Appellant hoisted Tigra by her collar, which lifted Tigra's legs off the ground and made her gasp for air. Appellant also hit Tigra with an electrical cable, drawing blood. Tigra whimpered in pain from the beating.

In February 2018, the People filed an information against appellant alleging one count of animal cruelty in violation of section 597, subdivision (b). Appellant pleaded not guilty. Following a jury trial, the jury convicted appellant as charged.

The court sentenced appellant to the upper term of three years in county jail and suspended execution of the sentence. The court placed appellant on five-years' formal probation. One condition of probation prohibited appellant from having contact with animals. The court told appellant, "You must stay 100 yards away from and have no contact with . . . any and all animals. There is a [ban] on animals for the five years for which you are on probation. You must not own, care for or interact with

¹ All further statutory references are to the Penal Code unless otherwise indicated.

any animals.” The court also ordered probation conditions that we discuss, *post*, that involved warrantless searches of appellant’s electronic devices and the location of her residence.

This appeal followed.

STANDARD OF REVIEW

We independently review questions of law such as a statute’s proper interpretation. (*People v. Cole* (2004) 33 Cal.4th 1158, 1217; *Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888.) We review questions of fact for substantial evidence. (*Crocker National Bank*, at p. 888.) We review conditions of probation for abuse of discretion. (*People v. Olguin* (2008) 45 Cal.4th 375, 384 (*Olguin*); *People v. Acosta* (2018) 20 Cal.App.5th 225, 229.)

Section 597 Not Unconstitutionally Vague

The court instructed the jury with CALJIC No. 14.98, which tracked the animal cruelty statute codified at section 597 under which appellant was convicted. As read to the jury, the instruction stated in pertinent part:

“Defendant is accused of having violated section 597, subdivision (b) of the Penal Code, a crime. [¶] . . . [¶] In order to prove this crime, each of the following elements must be proved. [¶] 1. A person *cruelly beat*, mutilated, or cruelly killed an animal or *caused* or procured an animal *to be tortured, tormented, cruelly beaten*, mutilated, or cruelly killed, or, if the person had the charge and custody of an animal, either as an owner or otherwise, *inflicted unnecessary cruelty* upon an animal, or in any manner abused any animal. . . .” (Italics added.)

Appellant contends the following phrases (which are italicized above) are unconstitutionally vague:

- cruelly beat;

- caused . . . to be tortured, tormented, [or] cruelly beaten; and,

- inflicted unnecessary cruelty.²

Appellant's contention is unavailing, and *People v. Speegle* (1997) 53 Cal.App.4th 1405, 1410-1411 (*Speegle*), which rejected a vagueness-challenge to section 597 under which appellant was convicted, illustrates why.

In *Speegle*, the defendant was convicted of cruelty to scores of animals in violation of section 597 by keeping them in filthy conditions and denying them food and water. Although *Speegle* involved statutory terms different from those appellant challenges, the analysis for unconstitutional vagueness was similar. The defendant in *Speegle* asserted the following terms were vague:

- an animal's "necessary" and "proper" food, drink, and shelter; and,

- an animal's "needless suffering."

Rejecting defendant's vagueness challenge, *Speegle* observed that a statute barring animal cruelty necessarily must be expansive in its language. *Speegle* explained, "There are an infinite number of ways in which the callously indifferent can subject animals in their care to conditions which make the humane cringe. It is thus impossible for the Legislature to catalogue every act which violates the statute." (*Speegle, supra*,

² Appellant asserts other words in the statute, such as "overwork" and "overdrive," are also unconstitutionally vague, but appellant lacks standing to argue the point on appeal because the trial court's jury instruction did not include those words. (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1095.)

53 Cal.App.4th at p. 1411.) *Speegle* held that a statute can pass constitutional muster despite being “somewhat vague or general in its language” so long as an objective standard of reasonableness applies to the challenged language, making its meaning “reasonably ascertainable.” (*Ibid.*) “It is not necessary,” according to *Speegle*, “that a statute furnish detailed plans and specifications of the acts or conduct prohibited. The requirement of reasonable certainty does not preclude the use of ordinary terms to express ideas [with] adequate interpretation in common usage and understanding. [Citation.] So long as the language embodies an objective concept, it is constitutionally concrete.” (*Ibid.*)

Speegle applies here. *Speegle* held that “the terms ‘necessary,’ ‘needless,’ and ‘proper’ ” withstood a vagueness challenge because they “all give fair notice of an objective standard of reasonableness in the provision of sustenance, drink, and shelter, and in the avoidance of infliction of suffering. The notice component of due process does not require any more.” (*Speegle, supra*, 53 Cal.App.4th at p. 1411.) Likewise here. The meaning of the phrases that appellant challenges – “cruelly beat,” “cause to be cruelly beaten,” “tortured,” “tormented,” and “inflict unnecessary cruelty” – are “ordinary terms” in “common usage” that are “reasonably ascertainable” when measured against “an objective standard of reasonableness.” The notice component of due process does not require any more. (*Ibid.*)

Appellant contends *Johnson v. United States* (2015) __ U.S. __ [135 S.Ct. 2551] (*Johnson*) establishes a more exacting constitutional standard than *Speegle*. Appellant is mistaken because the purported statutory vagueness that *Johnson* analyzed differed from the purported vagueness of section 597.

Johnson involved the interplay between Minnesota’s offense of unlawful possession of a short-barreled shotgun and the federal Armed Career Criminal Act (ACCA). (18 U.S.C. § 924(e)(2)(B).) ACCA increased the prison sentence for certain categories of offenders who had three or more prior convictions for, among other things, a “violent felony.” ACCA defined a “violent felony” in one of three ways: (1) a crime involving actual, attempted, or threatened physical force against another person; (2) certain enumerated offenses; or, (3) a crime that otherwise involves *conduct* that presents a serious potential risk of physical injury to another – this third way of defining a “violent felony” is known as the “residual clause.” (*Johnson, supra*, 135 S.Ct. at p. 2562; *People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1139 (*Frandsen*).)

Upholding a vagueness challenge to ACCA, *Johnson* found that the residual clause’s vagueness was two-fold. (*Johnson, supra*, 135 S.Ct. at pp. 2557-2558; *Frandsen, supra*, 33 Cal.App.5th at p. 1140.) First, the residual clause spoke of “conduct” instead of a felony’s statutory *elements*. The focus on *conduct* meant that instead of relying on the statute’s language to determine whether a felony is violent, one looks to the sentencing judge’s understanding of whether the “generic” or “ordinary” commission of the particular offense at issue was violent. (*Johnson*, at p. 2557; *Frandsen*, at p. 1140.) Illustrating by way of example, *Johnson* noted that inquiring into the character of the “ordinary” commission of an offense such as burglary involved vexing questions such as whether an “ordinary burglary” took place in, for example, a home occupied at night or an empty home during the day. (*Johnson*, at p. 2558.) Or, if the felony were extortion, questions arose whether an “ordinary extortion”

involved, say, threats of force against the victim or, perhaps, a letter threatening to reveal personal information. (*Ibid.*) Because no obvious method exists to predict beforehand how a sentencing judge might imagine what constitutes an “ordinary burglary” or “ordinary extortion” – as opposed to consulting a crime’s statutory elements in the Penal Code – a criminal defendant was at the mercy of a sentencing judge’s imagination of the particular crime’s “ordinary” character, which is an evil the vagueness doctrine aims to avoid. (*Johnson*, at p. 2556 [due process condemns vagueness in a criminal statute because vague language does not give an ordinary person notice of conduct that the statute criminalizes and invites arbitrary government enforcement].)

The second vagueness infirmity that *Johnson* identified – what qualifies as a “violent felony” – emerges from the first infirmity. The law recognizes that, generally speaking, qualitative terms such as “violent” can withstand vagueness challenges because people are capable of following laws that involve qualitative standards; in other words, people are capable of knowing what they must do to obey a law banning, for example, violent conduct. (*Johnson*, *supra*, 135 S.Ct. at p. 2561; *Frandsen*, *supra*, 33 Cal.App.5th at p. 1141.) But *Johnson* concluded that ACCA’s first infirmity made conforming behavior to the qualitative terms of the second infirmity impossible. In other words, while not all qualitative terms are vague, they are vague under the circumstances of ACCA. (*Johnson*, at p. 2558; *Frandsen*, at p. 1141.)

The two-fold infirmity that *Johnson* identified in ACCA does not apply to the animal-cruelty statute codified at section 597. Appellant’s vagueness claim rests on the purported

imprecision of the “qualitative” words of “cruelly beat,” “cause to be cruelly beaten,” “tortured,” “tormented,” and “inflict unnecessary cruelty” in section 597. But those qualitative terms do not suffer from *Johnson*’s first infirmity. Accordingly, they survive a vagueness-challenge resting on *Johnson*’s analysis.

Appellant’s vagueness-challenge additionally fails for a second reason separate from the inapplicability of *Johnson*’s analysis to section 597. That second reason is a defendant cannot raise a vagueness-challenge if the statute clearly prohibits the defendant’s conduct. “We consider whether a statute is vague as applied to the particular facts at issue, for ‘[a] plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.’” (*Holder v. Humanitarian Law Project* (2010) 561 U.S. 1, 18-19, 20 (*Holder*); see *In re Gary H.* (2016) 244 Cal.App.4th 1463, 1476 [relying on *Holder* to uphold vagueness challenge to school-loitering law].)

Johnson neither changed the legal rule undergirding the second reason nor overruled it. (*People v. Superior Court (J.C. Penney Corp., Inc.)* 34 Cal.App.5th 376, 386, 403 [*Johnson* did not overrule leading cases articulating rule as stated in *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.* (1982) 455 U.S. 489 and *Holder, supra*, 561 U.S. 1].) As our colleagues in Division Four recently explained, federal and state courts continue to uphold statutes against vagueness challenges after *Johnson* when the defendant’s conduct clearly falls within the statute’s ambit. (*J.C. Penney Corp., Inc.*, at pp. 403-404 and cases cited therein.) “We reject at the threshold [the] contention that a specific rule for evaluating facial challenges was abrogated in *Johnson v. United States* (2015) ___ U.S. ___ [135 S.Ct. 2551]

(*Johnson*). Under that rule . . . [citations], a facial challenge fails if the statute clearly applies to some or all the challenger’s conduct. We conclude that the rule retains its vitality post-*Johnson* . . .” (*Id.*, at pp. 385-386; see *People v. Ledesma* (2017) 14 Cal.App.5th 830, 838-839 [rejected argument that *Johnson* announced a new test for unconstitutional vagueness].)

People v. Thomason (2000) 84 Cal.App.4th 1064, 1070 is instructive. In that case, the defendant made a commercial video recording a woman crushing mice and rats with her bare feet or in high heels. A jury convicted the defendant for violating section 597, subdivision (a). That subdivision stated, “every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of an offense punishable by imprisonment in the state prison” The defendant challenged the statute as unconstitutionally vague because it did not distinguish between unlawfully killing a rodent and doing so lawfully, such as a pest-exterminator ridding a home of rodent infestation. (*Thomason*, at p. 1070.) On review, the Court of Appeal found the defendant lacked standing to raise a vagueness challenge. The Court of Appeal stated, “If a statute ‘clearly applies to a criminal defendant’s conduct, the defendant may not challenge it on grounds of vagueness.” (*Ibid.*)

Appellant advances no argument how the statutory language she challenges – cruelly beat; caused to be tortured, tormented, or cruelly beaten; inflicted unnecessary cruelty – is too vague for a reasonable jury, relying on those terms’ common meanings, could not apply the statute to her conduct. Perhaps on the margin the terms might not be clear, but the facts of this case do not lie on the margin – any reasonable person knows that

beating and choking a dog causing it to bleed and gasp for air, inflicts torture, torment, and cruelty. Appellant's vagueness challenge thus fails.

No Sua Sponte Duty to Define Torment, Torture, and Cruelty

The trial court instructed the jury with CALJIC No. 14.98, which uses the words "torment," "torture," and "cruelty." CALJIC No. 14.98, which tracks section 597, does not define those words. Section 599b states that "the words 'torment,' 'torture,' and 'cruelty' include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted." The trial court did not instruct the jury with section 599b or otherwise define "torment" "torture" and "cruelty" for the jury.³

Appellant contends the trial court erred in not instructing with section 599b. According to appellant, the court needed to instruct the jury that Tigra's subjective experience of pain or suffering was a necessary part of the definitions of torment, torture, and cruelty. (See *People v. Chaffin* (2009) 173 Cal.App.4th 1348, 1351 [trial court has sua sponte duty to define terms not used in their ordinary meaning].) Appellant contends the court's failure to define those terms was federal constitutional error akin to not instructing a jury with an element of the offense to which *Chapman* error applies. (*Chapman v. California* (1967) 386 U.S. 18.) Under *Chapman*, the People must prove beyond a

³ The prosecutor argued to the jury that "torture is every act, failure to act, neglect that causes or permits unnecessary or unjustifiable pain or suffering," but the prosecutor did not argue the meaning of "torment" or "cruelty."

reasonable doubt that the error was harmless. (*Neder v. United States* (1999) 527 U.S. 1, 15.) Appellant cites no authority, however, that a statutory definition is the same as an element. Hence, we reject appellant's contention that the trial court's purported error is reviewed for *Chapman* error.

On the other hand, assuming solely for the sake of argument that the court ought to have defined "torment," "torture," and "cruelty" for the jury, we review the court's failure to define those words for *Watson* error, which applies to instructional error of non-constitutional dimensions. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) Under *Watson*, the defendant must show a reasonable probability of a more favorable trial result but for the court's error. (*People v. Beltran* (2013) 56 Cal.4th 935, 955.) We conclude that the trial court's error, if any, in not telling the jury that torment, torture, and cruelty involved Tigra feeling "unnecessary or unjustifiable physical pain or suffering" was harmless. Appellant repeatedly kicked and punched Tigra. She hit Tigra with a cable, drawing blood. She hoisted Tigra by her collar, causing Tigra to gasp for breath. It is improbable that the jury would have concluded Tigra did not feel unnecessary or unjustifiable physical pain or suffering.

Probation Condition Allowing Warrantless Searches of Electronic Devices Not Unconstitutionally Overbroad

The court imposed a probation condition requiring appellant to submit to warrantless searches of her electronic devices. The court ordered, "You must submit your person and property to search and seizure at any time of the day or night by any peace officer, probation officer or animal control officer with or without a warrant, probable cause or reasonable suspicion. You are, specifically, waiving all rights to privacy in your

electronic information, as well as, those specified in Penal Code sections 1546 through 1546.4. [Electronic Communications Privacy Act].” Appellant’s counsel did not object to the condition.

Appellant contends the condition is overbroad because it violates her First Amendment rights of privacy and freedom of speech and her Fourth Amendment right to be free from unreasonable searches. We find appellant has forfeited her contention, however, because she did not object when the trial court imposed the condition. (*People v. Relkin* (2016) 6 Cal.App.5th 1188, 1194-1195.)

Appellant asserts forfeiture does not apply because her overbreadth claim presents a pure question of law. (*In re Sheena K.* (2007) 40 Cal.4th 875, 887.) But appellant is mistaken because the facts of her case affect the appropriateness of the probation condition, and thus the probation condition does not present a pure question of law. (*Id.*, at p. 885 [forfeiture appropriate because trial court better positioned than Court of Appeal to assess facts supporting probation condition].)

No Error Under *People v. Lent*

Appellant contends warrantless searches of her electronic devices as a condition of probation violates *People v. Lent* (1975) 15 Cal.3d 481. *Lent* establishes that a probation condition is invalid if it “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality” (*Id.* at p. 486.) “This test is conjunctive—all three prongs must be satisfied.” (*People v. Olguin, supra*, 4 Cal.4th at p. 379.)

Appellant forfeited her contention of *Lent*-error by not raising it at trial. (*People v. Relkin, supra*, 6 Cal.App.4th at pp.

1194-1195; *People v. Moran* (2016) 1 Cal.5th 398, 404, fn. 7; *People v. Welch* (1993) 5 Cal.4th 228, 237.) The exception to forfeiture involving pure questions of law does not apply because as noted above, the appropriateness of the warrantless search of appellant's electronic devices turns on questions of fact.⁴

Electronic Search Condition Does Not Violate Electronic Communications Privacy Act

Section 1546.1, subdivision (c)(10) permits the government to search an electronic device as a condition of probation unless federal law otherwise forbids the search. (§ 1546.1, subd. (c)(10) [government may search electronic device as condition of probation].) Appellant contends the United States Constitution prohibits the warrantless electronic search condition imposed here, and thus subdivision (c)(10) does not apply. In support of her contention that the search condition violates federal law, appellant cites *Riley v. California* (2014) 573 U.S. 373, which acknowledged the privacy implications of searching cell phones because of the amount of private information the phones contain. *Riley* is inapposite, however, because it involved warrantless searches incident to arrest, not probation conditions imposed, as

⁴ Appellant contends her trial counsel provided ineffective assistance by not objecting to the warrantless search condition. Because the record does not reveal why appellant's trial counsel did not object, we do not address appellant's contention. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266.) Generally speaking, the vehicle by which appellant may pursue her claim for ineffective assistance of counsel is by writ of habeas corpus. (*People v. Lucas* (2014) 60 Cal.4th 153, 307, disapproved on another ground in *People v. Romero* (2015) 62 Cal.4th 1.)

in this case, after conviction. (*Id.* at pp. 378, 382; see *In re J.E.* (2016) 1 Cal.App.5th 795, 804 review granted October 12, 2016, S236628 [*Riley* “inapposite” for probation conditions].)

Permission for Change of Residence

The court imposed as a condition of probation that appellant receive permission from her probation officer to change her residence. The court ordered, “You must maintain your residence as approved by the probation officer and keep the probation officer advised of your work and home address and telephone numbers at all times.” Appellant did not object to the condition, thus forfeiting the issue on appeal. (*People v. Relkin*, *supra*, 6 Cal.App.4th at pp. 1194-1195.) Because there are facts under which a residency condition can be appropriate, forfeiture applies to appellant’s failure to object. (*People v. Stapleton* (2017) 9 Cal.App.5th 989, 995-996 [upholding residency condition based on facts of defendant’s offense of petty theft with a prior, history of substance abuse, and need to ensure he did not live where drugs were used or sold]; see *In re Sheena K*, *supra*, 40 Cal.4th at p. 885 [forfeiture applies to probation condition linked to defendant’s circumstances and offense].) Accordingly, we do not address the merits of appellant’s contention that the court erred in imposing the condition.

DISPOSITION

The judgment is affirmed.

LEIS, J.*

We concur:

CHANEY, Acting P. J.

BENDIX, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.